IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 21890 of 2000(E)

PETITIONER:

L.LAILA,
ASSISTANT DIRECTOR OF AGRICULTURE,
PAZHAYANNOOR, THRISSUR DISTRICT,
RESIDING AT THOPPIL HOUSE, NELLAD P.O.,
MUVATTUPUZHA.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   AGRICULTURAL DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF AGRICULTURE,**
   THIRUVANANTHAPURAM.

3. **THE PRINCIPAL AGRICULTURAL OFFICER,**
   THRISSUR.

BY GOVERNMENT PLEADER SRI. K.V. MANOJ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NOS.36764 & 54153/2000 IN OP.NO.21890/2000 E

DISMISSED

7/06/2007 **SD/- T.R. RAMACHANDRAN NAIR, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF RELEVANT EXTRACT OF THE SENIORITY LIST OF AGRICULTURAL OFFICERS PUBLISHED BY THE 2ND RESPONDENT AS ON 1/01/1991.**

EXT.P2: **COPY OF RELEVANT EXTRACT OF NOTIFICATION, SB1.31616/95 DTD. 1/12/1999 BY THE 1ST RESPONDENT PUBLISHED IN KERALA GAZETTE EXTRAORDINARY VOL.XLIV DT.D. 2/12/99.**

EXT.P3: **COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT ON 19/04/2000.**

EXT.P4: **COPY OF ORDER NO.G.O.(RT) 807/2000/AD DTD. 28/04/2000 BY THE 1ST RESPONDENT TO THE PETITIONER.**

EXT.P5: **COPY OF JUDGMENT OF THIS HONOURABLE COURT IN O.P.NO.13462/2000C DTD. 31/05/2000.**

EXT.P6; **COPY OF ORDER NO.14600/EA1/2000/AD DTD. 5/07/2000 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER.**

EXT.P7: **COPY OF ORDER NO.SC(3) 2539/88 DTD. 18/10/1988 OF THE 2ND RESPONDENT ISSUED TO THE PETITIONER.**

EXT.P8; **COPY OF ORDER G.O.(MS) NO.70/97/AGRL. DATED 17/01/97 BY THE 1ST RESPONDENT TO THE PETITIONER.**

EXT.P9: **COPY OF ORDER NO.SD (3)61321/2000 DTD. 2/11/2000 OF THE 2ND RESPONDENT, REFERRED TO IN THE AFFIDAVIT.**

/TRUE COPY/

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No.21890 of 2000-E.

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Dated this the 7th day of June, 2007.

J U D G M E N T

This writ petition is filed by the petitioner challenging Exts.P6 and P9 orders. The short facts are as follows:

2. The petitioner was provisionally promoted on 10-1-1993 as an Assistant Director of Agriculture. This provisional promotion was ordered at the relevant time as there was no select list prepared by the DPC to the post of Asst. Director of Agriculture. The case of the petitioner is that in Ext.P2 select list she was not included, whereas one Mr.M.James who is junior to the petitioner in Ext.P1 has been included. Therefore, she filed Ext.P3 representation before the Secretary to Government and Convenor of the DPC. While so, she was reverted under Ext.P4 and it was challenged in OP.No.13452/2000. By Ext.P5 judgment this Court directed the Government to take a decision on Ext.P3. The said representation was considered as per Ext.P6 . Challenging Ext.P6, this writ petition was filed.

3. While the writ petition was pending, again the petitioner was reverted by Ext.P9 order dated 2-11-2000 and she was posted as Asst. Agricultural Officer. Even though the petitioner filed CMP.No.54153/2000 seeking for stay of the order, no interim order was granted.

4. The main contention raised by the petitioner is that the reason for rejecting her claim for inclusion in the select list stated in Ext.P6 are not correct. A reading of Ext.P6 shows that the DPC did not consider her case at the relevant time as disciplinary action was pending against her prior to 1993 and the CR prior to 1993 showed that her work was not up to the mark.

5. According to the petitioner, while passing Ext.P6 certain facts have been over looked by the Government. According to her, she was placed under suspension as per Ext.P7 dated 18-10-1988 and was reinstated in service with effect from 15-7-1989 and the final order barring petitioner's increment for one year without cumulative effect was passed as per Ext.P8. It is, therefore, contended that the DPC was held on 21-10-1999 much later than the issuance of Ext.P8 order. Therefore, it is contended that when the DPC met, there was no disciplinary proceedings pending against the petitioner and therefore the apparent reason stated in Ext.P6 is not correct. This contention is restated in grounds C and D of the writ petition.

6. The first respondent has filed a counter-affidavit which reveals the following facts. The first respondent points out that the petitioner has suppressed certain relevant material facts. The original select list was prepared and published in the Gazette No.1998 dated 4-12-1988 and while preparing the said select list the petitioner's case was considered and she was superseded on account of the reason that at that point of time she was under

suspension and was facing disciplinary proceedings. On 21-10-1999 the review committee of the DPC was held which considered the representations including that of the petitioner who were superseded by the DPC and Ext.P2 was the revised select list prepared and published by the DPC (Lower) on 21-10-1999. Therefore, it is contended that the case of the petitioner was already reviewed by the DPC and a second review is not at all contemplated under the provisions of the K.S. & S.S.R. unless it is so directed by the Government as empowered by sub clause 8(b) of Rule 28(b)(i) of K.S. & S.S.R. It is also pointed out that the petitioner filed a representation before the Secretary to Government, Agricultural Department who is actually the Convenor of the DPC (Higher) and is not the Convenor of the DPC (Lower). It is reiterated that all the contentions are considered in detail in Ext.P6. Since the petitioner was only provisionally promoted as Asst. Director and as she was not promoted in any of the post from 1993 onwards her reversion as per Exts.P4 and P9 are also justified.

7. The proceedings Ext.P8 shows that the petitioner was reinstated as per order dated 4-7-1989 of the Director of Agriculture. Reference (4) therein is the memo of charges issued to her dated 28-7-1993 and reference (5) is her reply dated 28-9-1993 to the said memo of charges. The DPC was held obviously for preparing select list for the year 1993. Therefore, at that time the disciplinary proceedings were pending against her. Ext.P8 is the final

order passed in that disciplinary proceedings whereby the penalties like withholding of increments for one year without cumulative effect and recovery from pay of the pecuniary loss caused to the Government with interest have been imposed. These are minor penalties imposed under Rule 11 of Kerala Civil Services (Classification, Control and Appeal) Rules. It is obvious that when the DPC met the period of punishment was not over also.

8. The relevant rule which has to be followed by the DPC for preparing the select list is Rule 28(7) of K.S. & S.S.R. and Notes therein. Going by Note (ii) to sub Rule 7, if the officers against whom departmental proceedings are taken for imposition of a minor penalty and who have been provisionally included in the select list are fully exonerated of the charges, their cases for promotion on the basis of such inclusion in the select list shall be considered. If the Officers are not fully exonerated of the charges, the Departmental Promotion Committee may decide each case on its own merit.

9. The petitioner has got a contention that when the DPC met there was no disciplinary proceedings pending against the petitioner, in so far as the period during the year 1993 is concerned. This contention is raised relying on the date of Ext.P2 which going by the averments in the counter-affidavit, is not correct. Actually, the select list was prepared and published in the Gazette No.1998 dated 4-12-1998 and going by the averments in para.3 while preparing such select list the petitioner's case was considered and she

was superseded on account of the reason that at that point of time she was under suspension and facing a disciplinary proceedings, even though it may not be true that she was under suspension on that day. Clearly the DPC was preparing the select list for the year 1993. It is clear that the DPC had considered her case at the relevant time and the petitioner has no case that during 1993 the disciplinary proceedings were not pending. It is also a case where her representation was considered by the review committee of the DPC and Ext.P2 is the revised select list prepared and published pursuant to the said meeting of the DPC (lower) held on 21-10-1999. Therefore, in the absence of any reply to the averments contained in the counter-affidavit, it is clear that the case of the petitioner was already reviewed by the DPC and a second review is not at all admissible in view of the provisions of the K.S. & S.S.R. The respondents have taken the stand that unless, it is directed by the Government under sub clause 8(b) of Rule 28(b)(i) in the General Rules in K.S. & S.S.R. it cannot be reviewed by the DPC again. The said position militates against the claim of petitioner now.

10. Going by the provisions of Note (ii), the DPC is entitled to decide each case on its own merit if the officers are not fully exonerated of the charges in a case where the officer is imposed of a minor penalty. It is evident that such exercise has been done by the DPC. Therefore, even though in Ext.P6 the dates of suspension and the dates of reinstatement in service are

not correctly stated; the same will not improve the case of the petitioner.

11. For the reasons stated above it is clear that there is no illegality or irregularity in the action taken by the DPC. Ext.P6 does not suffer from any legal infirmity. Hence, the Original Petition is dismissed. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-